

1 Christopher R. Kaup, State Bar No. 014820
2 J. Daryl Dorsey State Bar No. 024237



4 Third Floor, Camelback Esplanade II
5 2525 East Camelback Road
6 Phoenix, Arizona 85016-4237
7 Telephone: (602) 255-6000
8 Facsimile: (602) 255-0103
9 E-Mail: crk@tblaw.com; jdd@tblaw.com
10 *Attorneys for HIE Servicing, LLC*

11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **IN AND FOR THE DISTRICT OF ARIZONA**

13 In re:

14 **SUNRISE HOSPITALITY, LLC,**
15
16 Debtor.

Chapter 11

Case No. 4:09-26457-JMM

17 **HIE SERVICING, LLC'S MOTION**
18 **FOR TEMPORARY ALLOWANCE OF**
19 **ITS SECOND AMENDED PROOF OF**
20 **CLAIM PURSUANT TO**
21 **BANKRUPTCY RULE 3018(A)**

22 **Hearing Date: May 26, 2010**
23 **Hearing Time: 10:00 a.m.**
24 **Courtroom: 602 (Phoenix)**

25 HIE Servicing, L.L.C. ("HIE"), the senior secured creditor of Sunrise Hospitality,
26 LLC (the "Debtor"), by and through its undersigned counsel, hereby moves the Court
pursuant to Rule 3018(a), Fed.R.Bankr.P. to temporarily allow its proof of claim set forth
in the Second Amended Proof of Claim (the "Second Amended Claim") (Claim #13) in

1 the amount of \$5,665,667.53 for the purpose of HIE's ballot report rejecting the Second
2 Amended Plan of Reorganization (the "Plan") filed by the Debtor.

3
4 The Debtor objected to HIE's Amended Proof of Claim (the "Amended Claim")
5 filed on May 19, 2010 alleging, in pertinent part, that the default rate of interest, which
6 was included in the Amended Claim, exceeds the rate of interest allowed under the
7 Promissory Note (the "Note"), the SBA Agreement, and certain federal regulations. The
8 Debtor contends that the proper default rate is, as of the date of the filing of its Amended
9 Claim, 9.25%.

10
11 HIE disagrees with the Debtor's assertion for the reason that the default rate in the
12 Note is 5% and HIE believes it is entitled to payment of interest at that default rate. HIE,
13 however, is willing to accept the 9.25% rate of interest for the purposes of the trial on the
14 Debtor's Plan and requests that the Court temporarily allow the Second Amended Claim,
15 which includes calculations based upon the 9.25% interest rate, pursuant to Bankruptcy
16 Rule 3018(a)¹. FRBP 3018 (a) provides in relevant part:

17
18 ...Notwithstanding objection to a claim or interest, the court after notice and
19 hearing may temporarily allow the claim or interest in an amount which the
20 court deems proper for the purpose of accepting or rejecting a plan.

21 Fed.R.Bankr.P. 3018(a).

22 In this case, the Debtor asserts in the Plan and its Disclosure Statement in support
23 of the Plan that the value of the Property securing the debt owed to HIE is \$4,175,000.00.
24 For the purposes of determining the dollar amount of HIE's undersecured claim to be

25
26 ¹ Notwithstanding, HIE reserves its rights to provide evidence to establish the default rate of interest exceeds 9.25% in subsequent proceedings.

1 included in the calculation of the dollar amount of HIE's vote in Class V for general
2 unsecured claims, the amount of HIE's unsecured claim should be allowed, **only and**
3 **solely for the purposes of HIE's ballot report rejecting the Plan**, to be \$1,490,667.53.
4 That amount is the difference between the amount of HIE's Second Amended Proof of
5 Claim, \$5,665,667.53, and \$4,175,000.00.

6
7 HIE disputes the allegation that its collateral is worth only \$4,175,000.00, HIE and
8 intends to put on evidence at the Confirmation Trial that the value of the Property is
9 \$5,200,000.00. HIE believes it to be fair and appropriate for the Court to temporarily
10 allow the amount of HIE's unsecured claim for the **sole** purpose of ballot reporting
11 requirements under Section 1126 of the Code in the amount of \$1,490,667.53. HIE does
12 not agree that the value of the hotel and related personal property collateral is
13 \$4,175,000.00. In addition, HIE will proffer evidence in the form of an appraisal report
14 and testimony that the current fair market value of the Property is \$5,200,000.00 and HIE
15 is not waiving and, specifically, is reserving its right to prove that the value of the hotel
16 and personal property is greater than the amount alleged by the Debtor and reserves its
17 right to do so at the scheduled hearing on confirmation of the Debtor's Plan.
18

19 **RESPECTFULLY SUBMITTED** this 27th day of May, 2010.

20
21 **TIFFANY & BOSCO, P.A.**

22 By: /s/ J. Daryl Dorsey, #024237

23 Christopher R. Kaup, Esq.

24 J. Daryl Dorsey, Esq.

25 Third Floor Camelback Esplanade II

26 2525 East Camelback Road

Phoenix, Arizona 85016-4237

Attorneys for HIE Servicing, LLC

FOREGOING electronically filed with the Clerk of United States Bankruptcy Court this 27th day of May, 2010; and **COPY** to be mailed on the 28th of May, 2010 to:

Shelton L. Freeman, Esq.
DECONCINI, MCDONALD, YETWIN & LACY, P.C.
7310 North 16th Street, Suite 330
Phoenix, AZ 85020-5276
Attorneys for Sunrise Hospitality LLC

Mrs. Deborah Kolloway
9219 East Omega Street
Mesa, AZ 85207

Jonathan P. Ibsen, Esq.
JABURG & WILK, P.C.
3200 North Central Avenue, Suite 2000
Phoenix, AZ 85012-2463
Attorneys for Receiver

Knochel Brothers Inc.
Attn: Hub Knockel
1441 East Alameda Road
Phoenix, AZ 85024-4305

Lawrence E. Wilk, Esq.
JABURG & WILK, P.C.
3200 North Central Avenue, Suite 2000
Phoenix, AZ 85012-2463
Attorneys for Receiver

Carver & Associates
Attn: Doug Rome
242 Odell Road, Suite 4
Griffin, GA 30224-4879

Steven W. Cheifetz, Esq.
Daniel P. Velocci, Esq.
CHEIFETZ, IANNITELLI, MARCOLINI, P.C.
1850 North Central Avenue, 19th Floor
Phoenix, AZ 85004
Attorneys for Knochel Brothers Inc.

Holiday Hospitality Franchising, Inc.
Three Ravinia Drive
Atlanta, GA 30346

James E. Mannato, Esq.
FLORENCE TOWN ATTORNEY
P.O. Box 2670
Phoenix, AZ 85232
Attorneys for Town of Florence

Pinal County Assessor
31 North Pinal Street
Florence, AZ 85232

R. David Sobel, Esq.
ALTFELD, BATTAILE & GOLDMAN PC
250 North Meyer Avenue
Tucson, AZ 85701
Attorneys for Business Development Finance Corp.

Vestin Originations, Inc.
6149 South Rainbow Boulevard
Las Vegas, NV 89118-3250

Leib M. Lerner, Esq.
ALSTON & BIRD, LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, CA 90071
Attorneys pro hac vice for InterContinental Hotels Group and Holiday Hospitality Franchising, Inc.

Mr. Rick Husk, Deputy
Pinal County Attorney
Civil Division
P.O. Box 887
Florence, AZ 85132

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

John R. Worth, Esq.
FORRESTER, WORTH & GREEN, PLLC
3636 North Central Avenue, Suite 700
Phoenix, AZ 85012
*Attorneys for InterContinental Hotels Group and Holiday
Hospitality Franchising, Inc.*

Arizona Department of Revenue
P.O. Box 52153
Phoenix, AZ 85072

Key Equipment Finance Corp.
1000 South McCaslin Boulevard
Superior, CO 80027

Steele Engineering
5702 East Shea Boulevard
Scottsdale, AZ 85254-4843

Town of Florence
775 North Main street
Florence, AZ 85232

Business Development Finance Corp.
Attn: Carrie McGivern
3300 North Central Avenue
Phoenix, AZ 85012-2501

/s/ J. Daryl Dorsey

Ms. Dodie Doolittle
Pinal County Treasurer
P.O. Box 729
Florence, AZ 85132

Sunrise Plaza, LLC
695 West 16th Street
Florence, AZ 85232

Emanika Associates Architects, Inc.
695 West 16th Street
Florence, AZ 85232

Mr. David Kolloway
9219 East Omega Street
Mesa, AZ 85207

U.S. Trustee
OFFICE OF THE U.S. TRUSTEE
230 North First Avenue, Suite 204
Phoenix, AZ 85003-1275
U.S. Trustee